

Gala Food Processing, Inc. and American Federation of Grain Millers, AFL-CIO-CLC. Case 7-CA-34731

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On July 28 and August 12, 1993, the General Counsel of the National Labor Relations Board issued a complaint and an amended complaint alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 7-RC-19844 and refusing to provide the Union with necessary and relevant information. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On September 27, 1993, the General Counsel filed a Motion for Summary Judgment. On September 28, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain and to furnish information, but attacks the validity of the certification on the basis of the Board's resolution of its challenges to the ballots of two employees in the underlying representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board¹ makes the following

¹ Member Raudabaugh did not participate in the underlying representation proceeding.

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, with an office and place of business in Battle Creek, Michigan, has been engaged in the processing and packaging of brown sugar and powdered sugar. During the fiscal year ending September 30, 1992, the Respondent derived gross revenues valued in excess of \$500,000 and purchased goods and materials valued in excess of \$50,000 directly from points located outside the State of Michigan and caused these goods and materials to be shipped directly to its Battle Creek facility, the only facility involved in this proceeding. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held July 28, 1992, the Union was certified on May 17, 1993, as the collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time employees, including call-in employees, and warehouse assistants, employed by the Respondent at its facility located at 1475 Hill-Brady Road, Battle Creek, Michigan; but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since on or about May 24 and June 23, 1993, the Union has requested the Respondent to bargain and since on or about June 17 and 23, 1993, the Respondent has refused. On or about May 24, 1993, the Union requested that the Respondent furnish it with information pertaining to the current wages, hours, and other terms and conditions of employment of the unit employees. This information is relevant to and necessary for the Union's performance of its duties as the certified collective-bargaining representative of the unit employees.² Since on or about May 24, 1993, the Re-

² The Respondent's answer neither admits nor denies the relevance of this information but leaves the General Counsel to his proof. It is well established that information relating to current unit employees' wages, hours, and terms and conditions of employment is presumptively relevant and the Respondent has not attempted to rebut this presumption. See generally *Island Creek Coal Co.*, 292 NLRB 480, 487 (1989).

spondent has failed and refused to provide the Union with any of the relevant information. We find that this refusal to bargain and refusal to furnish relevant and necessary information constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after June 17 and 23, 1993, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and by refusing since on or about May 24, 1993, to provide relevant and necessary information to the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We shall also order the Respondent to furnish the Union with the requested information.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Gala Food Processing, Inc., Battle Creek, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with American Federation of Grain Millers, AFL-CIO-CLC, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) Refusing to provide the Union with requested information which is necessary for and relevant to the Union's duties as exclusive bargaining representative.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

All full-time and regular part-time employees, including call-in employees, and warehouse assistants, employed by the Respondent at its facility located at 1475 Hill-Brady Road, Battle Creek, Michigan; but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) Provide the Union with the requested information.

(c) Post at its facility in Battle Creek, Michigan, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 7 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. October 28, 1993

James M. Stephens, Chairman

Dennis M. Devaney, Member

John Neil Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with American Federation of Grain Millers, AFL-CIO-CLC as the exclusive representative of the employees in the bargaining unit and WE WILL NOT fail to provide the Union with necessary and relevant information.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time employees, including call-in employees, and warehouse assistants, employed by us at our facility located at 1475 Hill-Brady Road, Battle Creek, Michigan; but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL provide the Union with the necessary and relevant information which it requested.

GALA FOOD PROCESSING, INC.